

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

CANDACE SMITH,

Plaintiff,

v.

CITY OF FRESNO, et al.,

Defendants.

Case No. 1: 21-cv-01613-NONE-SAB

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DENYING  
PLAINTIFF'S APPLICATION TO  
PROCEED *IN FORMA PAUPERIS* AND  
REQUIRING PLAINTIFF TO PAY THE  
FILING FEE

(ECF No. 3)

OBJECTIONS DUE WITHIN FOURTEEN  
DAYS

Plaintiff Candace Smith filed a complaint in this action on November 4, 2021. (ECF No. 1.) Plaintiff did not pay the filing fee in this action and instead filed an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 3.) However, the Court found Plaintiff's application did not contain sufficient information for the Court to determine if she is entitled to proceed in this action without prepayment of fees. Specifically, the application shows Plaintiff denies any amount of income from any source in the past 12 months, denies having any cash or money in a bank account, and denies owning anything of value. In cases such as this where the Court finds Plaintiff did not provide the Court with sufficient information as requested in the application, the Court prefers to utilize a long form application in order to guide applicants in providing more accurate information. On November 8, 2021, the Court ordered Plaintiff to

1 either file a long form application to proceed without prepayment of fees or pay the filing fee.  
2 (ECF No. 4.) Plaintiff was provided twenty-one (21) days to file a long form application.  
3 Plaintiff was warned that the failure to comply with the order would result in this action being  
4 dismissed for failure to pay the filing fee and failure to comply with a court order. (Id. at 2.)  
5 Plaintiff did not file a long form application and the deadline to do so has expired.

6 In order to proceed in court without prepayment of the filing fee, a plaintiff must submit  
7 an affidavit demonstrating that he “is unable to pay such fees or give security therefor.” 28  
8 U.S.C. § 1915(a)(1). The right to proceed without prepayment of fees in a civil case is a  
9 privilege and not a right. Rowland v. California Men’s Colony, Unit II Men’s Advisory Council,  
10 506 U.S. 194, 198 n.2 (1993); Franklin v. Murphy, 745 F.2d 1221, 1231 (9th Cir. 1984)  
11 (“permission to proceed *in forma pauperis* is itself a matter of privilege and not right; denial of  
12 *in forma pauperis* status does not violate the applicant’s right to due process”). A plaintiff need  
13 not be absolutely destitute to proceed *in forma pauperis* and the application is sufficient if it  
14 states that due to his poverty he is unable to pay the costs and still be able to provide himself and  
15 his dependents with the necessities of life. Adkins v. E.I. DuPont de Nemours & Co., 335 U.S.  
16 331, 339 (1948). Whether to grant or deny an application to proceed without prepayment of fees  
17 is an exercise of the district court’s discretion. Escobedo v. Applebees, 787 F.3d 1226, 1236 (9th  
18 Cir. 2015).

19 Accordingly, IT IS HEREBY RECOMMENDED that Plaintiff’s application to proceed  
20 *in forma pauperis* be DENIED and Plaintiff be ordered to pay the \$402.00 filing fee for this  
21 action within fourteen (14) days of the order adopting.

22 This findings and recommendations is submitted to the district judge assigned to this  
23 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within **fourteen**  
24 **(14) days** of service of this recommendation, Plaintiff may file written objections to this findings  
25 and recommendations with the court. Such a document should be captioned “Objections to  
26 Magistrate Judge’s Findings and Recommendations.” The district judge will review the  
27 magistrate judge’s findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The  
28 parties are advised that failure to file objections within the specified time may result in the

1 waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing  
2 Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

3 IT IS FURTHERED ORDERED that if Plaintiff files a long form application within the  
4 fourteen (14) day objection period that demonstrates entitlement to proceed without payment of  
5 fees, the Court shall vacate this findings and recommendations as moot.

6  
7 IT IS SO ORDERED.

8 Dated: **December 3, 2021**

  
UNITED STATES MAGISTRATE JUDGE